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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

FELTEN, DANIEL S

ART UNIT PAPER NUMBER

3693

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/767,126

Applicant(s)

DAMAN ET AL.

Examiner

Daniel S. Felten

Art Unit

3693

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. In lieu of the telephone Interview September 21, 2006, this response is to clarify the status of previous Office Action . As agreed the Office Action of March 23, 2006 is considered a non-final. However, the arguments of the March 23, 2006 office action is reiterated here for the applicant's convenience.

#### ***Response to Arguments***

2. Applicant's arguments filed January 03, 2006 have been fully considered but they are not persuasive. It is respectfully submitted that references are evaluated by what they suggest to one versed in the art, rather than their specific disclosure [see *In re Bozek*, 163 USPQ 545 (CCPA 1969)]. In this case the primary reference, Friedland, discloses a live auction that takes place over the Internet to remote bidders in real time and allows submission of bids from remote bidders during the live auction (see Friedland, Abstract, the secondary reference shows conducting electronic auctions wherein a dynamic lot closing extension feature (see Alaia, Abstract). The 35 USC § 103 (a) rejection dated June 23, 2005 provided reasoning for the combinations of references and resolve the level of skill in the business method art. In response the applicant's analysis of the references, the examiner submits that one can not show non-obviousness by attacking references individually where, as here, the rejections are based on combination of references. Specifically the applicant asserts that the Internet and its underlying protocols do not guaranty delivery of any packets and that it can not guaranty that this occurs in real time (see Applicant's remarks, page 10 lines 6-15). The Examiner disagrees. As stated in

Art Unit: 3693

the previous office action the Internet is an example of packet-switching network. It is true that Freidland comment on the complexities implementing an Internet-based auction (see Friedland, col. 7, line 21+), but this does not take away from the fact that the Friedland may use data packets when considering that bids (or electronic information) are filtered by the DLA system and submitted electronically over the Internet from a bidder's computer system to the proxy's computer system (see Friedland, column 8, lines 28+).

In regards to the use of various servers, Friedland contemplates that the DLA auction server (312) may be implemented more than one server PCs (see Friedland column 8, lines 10-12).

In response to employing a web browser, Friedland discloses that the DLA transaction model employees a web page that interacts with the central server (see Freidland, fig. 5, column 10, lines 13+).

Thus 35 USC 103 (a) rejection from the previous office action is maintained. Subsequently the rejection of the amended claims 6, 7, 8 and 14 are also maintained and discussed below.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3693

2. Claims 1-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friedland et al (US 6,339,601) in view of Alaia et al (US 6,230, 146). Claims 1-5, 9-13 and 14-37 have been previously discussed (see Office Action dated June 23, 2005). Newly Amended claims 6, 7, 8 and 14 are discussed below based the previously cited prior art.

--In response to applicant's argument that claim 6, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

--In response to the remote server communicates with a user by means of hypertext language protocol, as claim 7, (see Friedland, fig. 5, column 10, lines 13+).

--In response to *automatically maintaining synchronization of a clock at each remote location*, as claim 8, (see Friedland, see “*updates to bidders*, column 8, lines 10-50); and “decrementing offering price over time...” (see Freidland, column 2, lines 29-36). In the examiner’s interpretation,

--In response to “generally relaxing a limiting restriction...*if* received within a bid time window...”, as in claim 14, is not considered a definite recitation because the word “if” precludes the certainty of the limitation being executed and/or provides a condition wherein the limitation is not performed. Therefore the limitation is rejected has non patentable (also consider Friedland, column 2, lines 29+).

***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Felten whose telephone number is (571) 272-6742. The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's e-mail Daniel.Felten@uspto.gov. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Art Unit: 3693

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Daniel S Felten  
Examiner  
Art Unit 3624

DSF  
10/15/ 2006



ELLA COLBERT  
PRIMARY EXAMINER